IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(1) Arbitration Application No.310 of 2004
with
(2) Arbitration Application No.311 of 2004
with
(3) Arbitration Application No.312 of 2004
with
(4) Arbitration Application No.313 of 2004
and
(5) Arbitration Application no.314 of 2004

Between

Vinodchandra J.Sheth ..Applicant

and

S.Kumars.Com Ltd. ..Respondent.

Shri M.M.Thorat for applicant
Shri M.N.Ramalingaiah for the respondent.

CORAM:.V.G.PALSHIKAR Ag.C.J.
18th NOVEMBER, 2005

P.C.

1. By these applications under section 11, the applicant seeks a direction under section 11(6) thereof for appointment of an Arbitrator.

2. Notice of the application was received and the respondent company has filed its reply wherein it is contended that factually Advocate Shri Kamalkant D.Kagtala having his office at Kanta Terrace, 2nd floor, 535, Kalbadevi Road, near Dhobi Talao, Mumbai 400 002 has been appointed as an Arbitrator. This factual averment is opposed by the applicant

by filing a rejoinder in which it is contended that making of this appointment and acceptance thereof by Shri Kagtala was never communicated to the applicant and, therefore, unless there is such communication of appointment and receipt thereof by the applicant, there can be no appointment of the Arbitrator in law.

3. Another reason for disputing the appointment of the Arbitrator is that though the appointment is claimed to have been made some time in August, 2004 no action so far is taken by the Arbitrator which supports his contention that there being no appointment there is no question of any action being taken.

4. In the light of provisions of section 11(6)(c) of the Act, maximum that can be done in this case is to issue a direction to the respondent company to make an appointment of the Arbitrator as per the agreed procedure. The franchisee agreement between the parties i.e. Shri Peter Paul Miranda and S.Kumars.Com Limited provides for dispute resolution as is contained in para 19 wherein it is clearly stated that any dispute arising between the Parties under this Agreement regarding the interpretation of the Agreement or otherwise shall

be referred for resolution to an Arbitrator appointed in this behalf by the Company. This being the position in law maximum that can be ordered in the present case is a direction under sec.11(6)(c) to the company to make the appointment.

5. In my opinion, no such direction is necessary because factually appointment has been made. There is no reason why a statement that such appointment has been made be not accepted merely because the communication thereof is not received by the applicant. Because the appointment of the arbitrator of his own choice is in the interest of the company and the company would, therefore, immediately make appointment whenever dispute arises. In any event such a direction will again result in another appointment by the company as per para 19 of the agreement. In my opinion, therefore, there is no need to issue any direction under sec.11 as prayed for in the application. The applicant shall be at liberty to move the Arbitrator at the address mentioned in this order and request him to proceed with the arbitration as early as possible. In the result, the application fails. Application is rejected.